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IN THE

Supreme Court of the United States

TERM, 1981

JOHN D. RANDALL, SR.,
Petitioner,

VS.

W. W. REYNOLDSON; CLAY LEGRAND; WARREN J. REES; HARVEY UHLENHOPP; DAVID HARRIS; MARK MCCORMICK; ROBERT G. ALLBEE; ARTHUR A. MCGIVERN; JERRY L. LARSON,
Respondents.

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IN THE MATTER OF: JOHN D. RANDALL, SR.

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Petitioner.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTONS PRESENTED

1. Did the Courts below properly dismiss for want of subject matter jurisdiction an action brought pursuant to 42 U.S.C. §1983 against the individual justices of the Supreme Court of Iowa seeking an order reinstating Petitioner's license to practice law in Iowa?

2. Was the conduct of the Petition such that any reasonable lawyer would know it was wrong and subject him to discipline, or is the language of the ethical consideration and disciplinary rules under which Petitioner was charged sufficiently clear to give adequate notice of conduct that will be subject to disciplinary action?

3. Did the Eighth Circuit Court of Appeals (a) err in refusing the Petitioner a hearing en banc; (b) deny the Petitioner due process of law and equal protection; and (c) is the Petitioner entitled to invoke Rule 17-1(a) of the United States Supreme Court?

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OPINION BELOW

The opinion of the Eighth Circuit Court of Appeals is reported as *In the Matter of John D. Randall,* 640 F.2d 898 (8th Cir. 1981).

JURISDICTION

The final order of the Eighth Circuit Court of Appeals affirming the prior rulings of the United States District Courts for the Northern and Southern Districts of Iowa was entered January 21, 1981. Its own opinion and order disbarring the Respondent was entered the same date. Rehearing was denied on March 3, 1981. Petitioner asserts that jurisdiction is conferred by Title 28, *United States Code,* Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment 14, Section 1, Constitution of the United States:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Iowa Code of Professional Responsibility for Lawyers (1973):

> *DR5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.*

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

EC5-5 A lawyer should not suggest to this client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.

STATEMENT OF THE CASE

Petitioner seeks a writ of certiorari directed to the Eighth Circuit Court of Appeals because of its decision upon a consolidated appeal involving four separate proceedings concerning Petitioner's disbarment by the Iowa Supreme Court, the federal district courts for the Northern and Southern Districts of Iowa,

and the Eighth Circuit Court of Appeals. The Respondent justices of the Iowa Supreme Court and the Respondent federal courts had separate counsel. However, since all of these cases now involve common questions of law and fact, it is felt that a consolidated brief for all Respondents is appropriate.

John D. Randall, Sr., was disbarred by order of the Supreme Court of Iowa on November 14, 1979, for violating Disciplinary Rules DR5-101(A) and DR5-104(A) relating to conflict of interest, by representing a corporation, wholly and equally owned by Randall and his business partner, in litigation with a former employee, and for drawing a will for the business partner naming Randall as the sole beneficiary, contrary to Ethical Consideration 5-5, *Iowa Code of Professional Responsibility for Lawyers. Committee on Professional Ethics and Conduct of the Iowa State Bar Association* v. *Randall,* 285 N.W.2d 161 (Iowa 1979) (hereinafter *Committee* v. *Randall).* A Petition for Certiorari was filed with this Court and denied on May 12, 1980, ___ U.S. ___, ___ S.Ct. ___, 64 L.Ed.2d 802 (1980).

The District Courts for the Northern and Southern Districts of Iowa subsequently issued orders to show cause why Randall should not be barred from practicing in their courts. After written submissions by Randall and the Committee on Professional Ethics and Conduct, orders were entered disbarring Randall from the Southern District of Iowa on January 17, 1980, and from the Northern District of Iowa on May 20, 1980.

Randall also filed in the Northern District of Iowa an action against the individual Justices of the Supreme Court of Iowa pursuant to 42 U.S.C. §1983 styled a Petition for Declaratory Relief and to Compel Issuance of a License to Practice Law in the State of Iowa. In essence, Randall's Petition alleged that he was denied due process of law because (1) he was denied discovery concerning the investigatory procedures of the Chairman of the Committee on Professional Ethics and Conduct and

the "prosecuting attorney" for the Committee;[1] (2) the panel members of the Grievance Committee which heard the evidence in the first instance were biased against him; (3) the charged violations of the *Code of Professional Responsibility* which formed the basis for discipline were not supported by sufficient evidence; and (4) he lacked notice that he could be disciplined for violation of those portions of the *Code of Professional Responsibility* known as "Ethical Considerations." Randall's Petition also claimed that he was denied equal protection of the laws because he was allegedly disciplined more severely than others similarly situated.

The Respondent Justices moved to dismiss the §1983 action on the grounds, *inter alia,* (1) that 42 U.S.C., §1983 does not confer upon federal district courts subject matter jurisdiction to review by appeal or collateral attack a final judgment of a state supreme court disciplining a member of that court's bar for professional misconduct, (2) that Randall's federal claim is grounded in the same operative nucleus of fact as the state court proceeding and is, therefore, barred by the doctrine of res judicata, and (3) the petition fails to state a claim upon which relief can be granted. The district court found merit in all three grounds and dismissed the petition on May 20, 1980.

Appeals from the federal court disbarments were consolidated with an appeal from the dismissal of the §1983 action and consideration of whether Randall should be disbarred from the Eighth Circuit Court of Appeals. The Eighth Circuit affirmed all orders of the district courts and disbarred Randall from the Court of Appeals.

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[1]Appendix "A", Rule 3.4. The Rules of Procedure, the Professional Ethics and Conduct Committee of the Iowa State Bar Association are set forth in full in Appendix "A". Supreme Court of Iowa Rule 118 governing the procedure before the Ethics Committee and Grievance Commission is set in full as Appendix "B" to this Brief.

The Eighth Circuit held that the lower federal courts are without jurisdiction to review a state judgment of disbarment, that certiorari to this Court is the only appropriate mode of review and applied the doctrine of res judicata to those issues which it concluded were actually litigated in the state proceeding. Nonetheless, the due process and equal protection issues raised in the §1983 petition were fully considered and found to be without merit by the Eighth Circuit. In particular, the court below concluded that a disbarment based in part upon violation of an ethical consideration did not violate due process.

In reviewing the federal district court disbarments, the Court of Appeals gave due respect to the state court judgment, but made its own independent review. The Iowa Supreme Court held that since Randall did not include in his brief any issue of due process of law, that issue was deemed waived. However, the Court of Appeals held that "that constitutional issue" was squarely before it in its own disbarment proceeding and thereafter reviewed, at length, the Petitioner's argument. The Court of Appeals overruled Petitioner's objections in all respects.

John D. Randall, the Petitioner was an attorney, business associate, and friend of Lovell Myers. These various relationships had their inception sometime in the early 1940's and continued until Myers' death in 1976.

On February 17, 1973, an individual known as Gilbert Morningstar accused Lovell Myers and Petitioner of forging a deed for approximately eighty acres of land from Gilbert Morningstar and his wife to a corporation, Myers Farms, Inc., wholly owned by Petitioner and Lovell Myers. On the same day, Lovell Myers admitted the deed forgery and the Petitioner and Lovell Myers, on behalf of the corporation, quit claimed this eighty acres of land back to Gilbert Morningstar.

Twenty-five days after the accusation by Gilbert Morningstar, on March 14, 1973, the Petitioner drafted a Last Will

and Testament for Lovell Myers, which was shortly thereafter executed by Myers, leaving all of Myers' property (which had a gross value of approximately two million dollars) to Petitioner. Lovell Myers' daughter, Marie Jensen, and her family with whom Myers had maintained a close family relationship over the years, were not mentioned in the will. Upon the offering by Petitioner of the will for probate, Lovell Myers' daughter brought suit to set aside the will. A mortgage remained as a first lien against the eighty acres that the Petitioner and Lovell Myers (on behalf of Myers Farms, Inc.) had quit claimed to Gilbert Morningstar. Morningstar then brought a civil action against Myers Farms, Inc. for slander of title.

During discovery depositions in both cases, the Petitioner alleged that this eighty acres was the property of Myers Farms, Inc., and, further, that Lovell Myers and Gilbert Morningstar had, over the years, by a common scheme misappropriated corporate assets. Despite the conflict which arose between Petitioner's interests and those interests of Lovell Myers when Petitioner believed that Myers and Gilbert Morningstar had conspired against him to defeat his ownership of the eighty acres, Petitioner continued to act as attorney for both Myers and the corporation. The will contest was later settled for a value of approximately one and one-half million dollars.

REASONS FOR DENYING THE WRIT

This Court declined to review the disbarment of John Randall when certiorari was sought from the decision of the Supreme Court of Iowa. ___ U.S. ___, ___ S.Ct. ___, 64 L.Ed.2d 802 (1980). Three federal courts have now satisfied themselves that disciplinary action against Randall was required. There is even less reason for review by this Court now than there was in 1980.

Supreme Court Rule 17 sets forth Considerations Governing Review or Certiorari. Petitioner suggests no conflict in the circuits and no conflict between the decision of the Eighth Circuit and the decisions of this Court or the highest court of a state. It will be demonstrated below that this petition does not present an important question of federal law which should be settled by this Court.

I.

42 U.S.C. §1983 Does Not Confer Upon Federal District Courts Subject Matter Jurisdiction To Review By Appeal Or Collateral Attack A Final Judgment Of The Highest State Court Disciplining A Member Of That Court's Bar For Professional Misconduct.

In declining to afford appellate review of a judgment of the Supreme Court of Iowa, the federal courts below were merely following a long-established and widely accepted rule in the circuits.

The Eighth Circuit followed its own leading case on point. In *Jones* v. *Hulse*, 391 F.2d 198 (8th Cir. 1968), *cert. denied*, 393 U.S. 889 (1968), an attorney was suspended for three years from the practice of law by the Missouri Supreme Court for solicitation of personal injury claims. He petitioned this Court for a writ of certiorari. When the petition was denied, he filed a §1983 action in the district court alleging that he had been denied due

process because the Missouri Supreme Court had been affected by perjurious testimony offered by the Advisory Committee of the Missouri Bar Association. In affirming the district court's dismissal for lack of subject matter jurisdiction, the Eighth Circuit relied upon the holding in *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 416 (1923):

> "If the constitutional questions stated in the * * * [complaint] actually rose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. [Citations omitted] Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character. * * * To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original."

The *Rooker* holding is fully applicable here because, in exercising its judgment concerning the existence of misconduct by Randall and the necessity for discipline, the Supreme Court of Iowa performed a *judicial* act, *In re Summers,* 325 U.S. 561, ____ (1945), reviewable in this Court, see e.g. *In re Primus,* 436 U.S. 412 (1978); *Ohralik* v. *Ohio State Bar Ass'n.*, 436 U.S. 447 (1978). As developed above, disciplinary proceedings in Iowa afford the respondent (the Petitioner herein) a trial-type hearing before the Grievance Commission and de novo review with findings of fact and conclusions of law in a formal opinion by the Supreme Court of Iowa. There can be no doubt that the Supreme Court of Iowa functioned in a judicial capacity in the proceeding that led to Randall's disbarment.

It appears that every circuit to have considered the question has reached an identical result. See *Rivera* v. *Monge*, 587 F.2d 539 (1st Cir. 1978); *Sawyer* v. *Overton*, 595 F.2d 252 (5th Cir. 1979); *Coogan* v. *Cincinnati Bar Ass'n.*, 431 F.2d 1209 (6th Cir. 1970); *Ginger* v. *Circuit Court for Wayne County*, 372 F.2d 621 (6th Cir. 1967); *Grossgold* v. *Supreme Court of Illinois*, 557 F.2d 122 (7th Cir. 1977); *MacKay* v. *Nesbett*, 412 F.2d 846 (9th Cir. 1969); *cert. denied*, 396 U.S. 960 (1969); *Doe* v. *Pringle*, 550 F.2d 596 (10th Cir. 1976); *Gately* v. *Sutton*, 310 F.2d 107 (10th Cir. 1962).

Lest there be confusion, respondents do not maintain that a federal district court is totally without jurisdiction to consider constitutional challenges to the fairness of state attorney disciplinary proceedings. The rule of *Jones* v. *Hulse* is not applicable to an anticipatory challenge to the adoption or administration of rules and regulations of general application. See *Doe* v. *Pringle*, 550 F.2d 596, 599 (10th Cir. 1976); *Brown* v. *Board of Bar Examiners*, 623 F.2d 605, 610 (9th Cir. 1980). In the bar admission context, this Court's decision in *Law Students Civil Rights Research Council, Inc.* v. *Wadmond*, 401 U.S. 154 (1971) illustrates a proper invocation of original federal jurisdiction. There, organizations and individuals representing law students and law graduates who intended to seek admission to the New York bar challenged the rules and screening procedures employed to determine an applicant's character and fitness to practice. The claim of the plaintiff was not that any one candidate had been improperly denied admission to the bar, but rather that the mere existence of the screening system constituted an impermissible "chilling effect" on the exercise of First Amendment rights to freedom of speech and association. Plaintiffs lost on the merits, but there appeared to be general agreement that the district court had subject matter jurisdiction.

Randall, however, seeks *reinstatement* of his license to practice law in Iowa — not a general declaration that a rule is unconstitutional. Randall's complaints all focus upon the particular procedures employed by and the result reached by the court in his particular case. In effect, Randall seeks a *reversal* of the order of the Supreme Court of Iowa. But that relief may be provided only by this Court on *direct* review and, as the circuits have held unanimously, may not be provided by a federal district court in an original action.

II.

The Conduct Of The Petitioner Was Such That Any Reasonable Lawyer Would Know It Was Wrong And Subject Him To Discipline; In Any Event, The Language Of The Ethical Considerations And Disciplinary Rules Under Which Petitioner Was Charged Is Sufficiently Clear So As To Give Adequate Notice Of Conduct That Will Be Subject To Disciplinary Action.

Randall apparently urges this Court to review the abstract question of whether due process permits discipline of an Iowa attorney, in whole or in part, for conduct contrary to ethical considerations in the *Iowa Code of Professional Responsibility for Lawyers*. The argument seems to be that an ethical consideration, merely by virtue of its classification in the *Code* becomes constitutionally inadequate.

Because this Court can consider only concrete cases, however, it may be helpful to focus on the specifics of this matter. First, it should be noted that Randall was sanctioned for violations of disciplinary rules concerning conflicts of interest as well as for violation of a particular Ethical Consideration, EC5-5.

Second, Randall raised a vagueness challenge to EC5-5 in the Answer he filed in the proceeding before the Grievance Commission. He then voluntarily abandoned the claim and did not

raise the issue in his brief or on oral argument before the Supreme Court of Iowa. Rather, he argued that he did not violate EC5-5. This shift in tactics may be explained by the fact that the decision in *Committee on Professional Ethics* v. *Behnke,* 276 N.W.2d 838 (Iowa 1979), *appeal dismissed,* 444 U.S. 805 (1979), was filed by the Supreme Court of Iowa on March 21, 1979, and Randall's Brief and Argument was filed on June 25, 1979. *Behnke* rejected the precise vagueness challenge to EC5-5 that Randall would now raise, in a context where Behnke was disciplined *solely* for violation of that Ethical Consideration. This Court has indicated that dismissal of an appeal for want of a substantial federal question should be treated as a precedent. *Meek* v. *Pittinger,* 421 U.S. 349, 367 (1975); *Edelman* v. *Jordan,* 415 U.S. 651, 671 (1974). Randall suggests no sufficient reason why the *Behnke* decision should be reconsidered.

Third, Randall resurrected the vagueness claim in the first petition for certiorari filed with this Court in March, 1980, and denied on May 12, 1980. ___ U.S. ___, ___ S.Ct. ___, 64 L.Ed.2d 802 (1980).

Finally, after the petition for certiorari was denied by this Court, Randall included the claim in the 42 U.S.C. §1983 action. Both the district court and the Eighth Circuit rejected the claim on the merits and concluded Randall had ample notice he was subject to discipline.

In making the assertion of unconstitutionality, the Petitioner has assumed a very heavy burden of proof in overcoming the presumption of constitutionality and negating every conceiveable interpretation favoring constitutionality. *Fleming* v. *Nestor,* 363 U.S. 603, 617 (1960); *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U.S. 356, 364 (1973); *Moorman Mfg. Co.* v. *Bair,* 254 N.W.2d 737 (Iowa 1977), *aff'd.* 98 S.Ct. 478 (1978).

An allegation of vagueness was made in *Complaint of Rook,* 556 P.2d 1351, 276 Or. 695 (1976) against DR1-102(1) (a lawyer

should not violate a disciplinary rule) and DR1-102(5) (a lawyer shall not engage in conduct prejudicial to the administration of justice). A district attorney had been accused of refusing to plea bargain with criminal defendants on the same basis as previously offered to other criminal defendants as long as such persons were represented by either of their attorneys. The Court disposed of this issue as follows:

> "As for the contention by the accused that the terms of DR1-102(1) and (5) are unconstitutionally vague, we believe that as standards of professional conduct they are sufficiently definite for the purpose of a professional disciplinary proceeding. See *Board of Medical Examiners* v. *Mintz,* 233 Or. 441, 448, 378 P.2d 945 (1963). We have previously held that such a proceeding is not a criminal proceeding and that the technicalities of criminal law, which are properly invoked to safeguard the liberty of citizens, are not necessarily relevant in the investigation of unethical conduct by an attorney. See *In re Gronnert,* 242 Or. 233, 236, 391 P.2d 772 (1965). See also, *In re Laske,* 269 Or. 146, 158, 523 P.2d 1262 (1974). This is particularly true where, as in this case, no First Amendment freedoms have been violated. Cf. *State* v. *Nelson,* 210 Kan. 637, 504 P.2d 211 (1972)." 556 P.2d at 1357.

In the case of *State* v. *Nelson,* 210 Kan. 637, 504 P.2d 211 (1972), an attorney was charged with violating DR1-102(A)(5) in connection with certain statements he made to the newspapers covering a lawsuit in which his client lost. The statements were critical of the courts in general. The attorney asserted that the word "prejudicial" as it appears in DR1-102(A)(5) was unconstitutionally vague. The Court stated as follows:

> ". . .Respondent's position is unsupported in both instances. The word 'prejudicial' is universally found throughout the legal and judicial system. Specific definitions are found in any dictionary." 504 P.2d at 214.

This Court in *In re Ruffalo,* 390 U.S. 544 (1968) made certain statements appropos to the case at bar:

> "A relevant inquiry in appraising the decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed. The Court of Appeals, Sixth Circuit, have provided petitioner and other members of its bar with a general standard for disbarment:
>
> > 'When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be forthwith suspended from practice before the court and notice of his suspension will be mailed to him, and unless he shows good cause to the contrary within 40 days thereafter, he will be further suspended or disbarred from practice before the court. (Rule 6(3), Court of Appeals for the Sixth Circuit.)'
>
> "Even when a disbarment standard is unspecific as the one before us, members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, wili be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as malum in se. It also includes conduct for which all responsible attorneys would recognize as improper for a member of the profession." 390 U.S. at 554-555."

The Petitioner cites two cases which considered the question of vagueness in considering the constitutionality of DR7-107. Both cases, *Hirschkop* v. *Snead,* 594 F.2d 356 (4th Cir. 1979) and *Chicago Council of Lawyers* v. *Bauer,* 522 F.2d 242 (7th Cir. 1974), *cert. denied,* 427 U.S. 912 (1976), concluded as they did because of First Amendment considerations. The first amendment is not involved here.

It is submitted that the only vagueness in this matter is how Petitioner could believe his conduct to be proper under any definition of any word or standard involved in the proceeding. In essence, the Petitioner is saying he did not understand that adherence to the principles of "common honesty" as well as the *Iowa Code of Professional Responsibility for Lawyers* prohibited his conduct. The Petitioner seeks to have the Court judge his conduct by some nonexistent standard. In arguing the denial of due process, he apparently wished to have the Iowa Federal Courts and the Court of Appeals read the *Code of Professional Responsibility* in some strict, legalistic and technical manner. This would be contrary to interpretations of the *Code* by the Iowa Supreme Court. *Committee* v. *Crary,* 245 N.W.2d 298, 307 (Iowa 1976). It is respectfully submitted that the *Iowa Code of Professional Responsibility for Lawyers* is sufficiently clear by which to judge an attorney's conduct or fitness and that no lawyer should have any difficulty in concluding that Petitioner's conduct was improper and reflects a lack of fitness to practice law.

Certainly, the language of EC5-5 is reasonably specific. It provides in pertinent part:

> "Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client."

No attorney is forced to "guess" the meaning of EC5-5 to avoid the prospect of discipline for misconduct. An attorney who declines to prepare any instruments in which he or she is named beneficially will plainly have no difficulty. An attorney who believes he is faced with "exceptional circumstances," may, in Iowa, receive guidance in the form of an Ethics Opinion. Randall did not do that.

Indeed, Randall's argument does not focus on the critical language at all. His argument seizes upon the allegedly "merely aspirational" character of "Ethical Considerations" in general.

Presumably, however, the legal significance of particular provisions of state law is not a federal question. The Supreme Court of Iowa has held consistently since 1973, when the issue first arose, that Iowa lawyers are not free to regard "ethical considerations" as merely aspirational, if by that it is meant that none of them proscribe conduct that may subject an attorney to serious discipline. See *State* v. *Thompson,* 208 N.W.2d 926, 927 (Iowa 1973); *Matter of Frerichs,* 239 N.W.2d 764, 769 (Iowa 1976); *Committee on Professional Ethics* v. *Behnke,* 276 N.W.2d 838, 840 (Iowa 1979).

The Eighth Circuit recognized EC5-5 did not mandate some novel, demanding standard of conduct. Rather it codifies common sense and is the current articulation of a long-standing prohibition. The footnotes to EC5-5 and EC5-7 make clear that this conduct has long been proscribed and a unanimous line of authority confirms that claim. See, e.g., *In re Krotenberg,* 11 Ariz. 251, 527 P.2d 510 (1974); *Columbus Bar Association* v. *Ramey,* 32 Ohio St.2d 91, 290 N.E.2d 831 (1972); *In re Jones,* 254 Or. 617, 462 P.2d 680 (1969); *In re Knneland,* 233 Or. 241, 377 P.2d 861 (1963); *In re MacFarlane,* 10 Utah 2d 217, 350 P.2d 631 (1960); *In re Moore,* 218 Or. 403, 345 P.2d 411 (1959); *Lantz* v. *State Bar of California,* 212 Cal. 213, 298 P. 497 (1931). See also the numerous cases cited at 98 A.L.R.2d 1234. These authorities establish:

(1) A reasonably informed attorney would be on notice that his conduct in drafting a will in which he is a named beneficiary will subject him to disciplinary action. This rule was well established by cases before Randall's conduct so his claim of lack of notice is without merit.

(2) The prohibition contained in EC-5 is based on the long and unhappy experience of the Bar in attempting to regulate situations fraught with potential for over-reaching and abusing clients. EC5-5 is merely the current articulation of a long-standing prohibition.

As all courts, state and federal, which have considered Randall's conduct have concluded, any reasonable attorney in his circumstances should have known that making himself Myers' heir would be grounds for discipline.

III.

Did The Eighth Circuit Court Of Appeals (A) Err In Refusing The Petitioner A Hearing En Banc; (B) Deny The Petition Due Process Of Law And Equal Protection; And (C) Is The Petitioner Entitled To Invoke Rule 17-1(a) Of The United States Supreme Court?

Petitioner now attacks the Eighth Circuit in the same manner as he previously attacked the Supreme Court of Iowa and the Iowa Federal Courts. First, he attacks Senior Judge Gibson as not being qualified to sit upon the division that heard his case. Senior Judge Gibson is a "judge of the United States" as defined in 28 U.S.C. §451. He has retired. He is still available to perform judicial duties. He has been thus assigned to perform judicial duties pursuant to 28 U.S.C. §294(c). One of these duties was to participate in the determination of Petitioner's appeal. A judge on senior retired status, while sitting by assignment, has the same status as an active judge. *United States* v. *Moore,* 101 F.2d 56 (2nd Cir. 1939) *cert. denied,* 306 U.S. 664, 59 S.Ct. 788, 83 L.Ed. 1060.

The Circuit Court sits in divisions. 28 U.S.C. §46(a). The Circuit Court directs its own business. 28 U.S.C. §46(b). A division consists of not more than three judges unless a hearing en banc is ordered. 28 U.S.C. §46(c). The Eighth Circuit sits in divisions of not more than three judges with a majority constituting a quorum. A division is "the court". Appendix "C", Rule 2(a). In any event, the Petitioner's case was heard and determined by a quorum.

Cases are heard en banc at the Circuit Court level when "(1) consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance." F.R.A.P. 35. Petitioner does not suggest that his case conflicted with any other decision. The Circuit Court must have wide discretion to decide what cases involve questions of exceptional importance. Petitioner has not suggested any abuse of discretion. Rule 7 implements this rule of appellate procedure. See Appendix "C".

Appellate rule 46(b) provides for the procedure to hear and determine if an attorney should be suspended or disbarred. Petitioner does not suggest that this procedure was violated. Even though he made no request, he was afforded a hearing upon the Eighth Circuit's consideration of response to the show cause order.

Petitioner is displeased with the decision of the Court of Appeals. The fact that he lost does not mean his rights to due process of law were violated. The opinion of the Court below amply demonstrates that his constitutional rights were fully considered. He committed serious ethical infractions and must now stand and answer for them.

CONCLUSION

For all the reasons set forth herein, the Respondents pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

RULES OF PROCEDURE PROFESSIONAL ETHICS AND CONDUCT COMMITTEE OF THE IOWA STATE BAR ASSOCIATION

[Adopted by Supreme Court Order December 12, 1974]

1.1 Complaints. Complaint forms shall be available to the public from the secretary of the Iowa state bar association or the chairman of the committee.

1.2 Filing. Complaints shall be accepted from any person, firm or other entity believing that an Iowa lawyer has been guilty of a disciplinary infraction.

a. Complaint must be sworn to, except when filed by an officer of the court.

b. Complaints shall include whatever exhibits complainant desires to submit.

c. They shall be filed, without charge, with the secretary of the Iowa state bar association.

d. The committee may, upon its own motion, initiate any investigation or disciplinary action. [Court Order June 20, 1980]

2.1 Secretary's procedure. Upon receiving a complaint in proper form as provided in section 1 hereof, the secretary of the Iowa state bar association shall:

a. Make a card record indicating the date filed, name and address of complainant, name and address of respondent lawyer, with a brief statement of the charges made. This card ultimately also shall show the final disposition of the matter when it is completed.

b. Forward the original and a duplicate for each lawyer charged in such complaint to the chairman of the committee.

c. The secretary shall keep all files in permanent form and confidential, unless otherwise provided or directed in writing by the chairman of the committee for disciplinary purposes or by a specific rule of the supreme court of Iowa; provided, however, that all such files shall be available for examinaton and for reproduction therefrom, by the designated officer or agent of the client security and attorney disciplinary commission, pursuant to proceedings under supreme court rule 121.

d. Any such files shall be open to the inspection of the lawyer complained against.

3.1 Committee procedure. Upon receipt of any complaint the chairman of the committee shall notify the complainant in writing that the complaint has been received and will be acted upon.

3.2 The chairman shall forward to the respondent by restricted, certified mail, marked "Confidential", a copy of the complaint, requesting a written response thereto, and copies of the committee rules and of supreme court rule 118.

3.3 If after thirty days, no such response from respondent has been received, he shall be notified by restricted certified mail that unless he responds thereto within ten days from receipt of notice, complaint may be filed with the grievance commission for failure so to respond, and concerning all or any portion of the matter about which complaint was made, and the committee shall proceed therewith thereafter, if no response is received.

3.4 Upon receipt of response the committee shall:

a. Dismiss the complaint, and so notify complainant and respondent in writing, or

b. Cause the case to be docketed for consideration of the committee at its next hearing-meeting, or

c. Arrange for investigation of the complaint either by a member of the young lawyers section of the Iowa state bar association, the committee counsel or another person, whichever in the judgment of the chairman is appropriate.

3.5 When the report and recommendation of investigator is returned to the committee, which shall be within a reasonable time, the committee shall:

a. Dismiss the complaint, and so notify complainant and respondent, or

b. Cause the case to be docketed for consideration of the committee at its next hearing-meeting.

3.6 If either witnesses or the respondent or complainant or any of them is required to give testimony before the committee, such person or persons shall be given at least seven days' written notice in advance of the hearing-meeting at which they are requested to attend and testify.

4.1 Hearing-meeting. Hearing-meetings shall be held quarterly, as nearly as possible. A majority of the committee shall constitute a quorum. The chairman or his designate shall see to the preparation of a record of such meetings which shall become a part of the permanent files of the Iowa state bar association. Any evidence taken shall be under oath and may be made of record. Upon completion of the consideration of any matter before the committee, the members, by majority vote of those present shall:

4.2 Continue the matter if necessary for appropriate reasons or purposes, or

4.3 Dismiss the complaint, or

4.4 Admonish the lawyer or lawyers concerned, or

4.5 Reprimand the lawyer or lawyers involved, or

4.6 File complaint before the grievance commission of the supreme court of Iowa, as complainant, and, thereafter shall:

4.7 In cases of dismissal, so notify complainant and respondent.

4.8 In cases of admonition, notify complainant that "appropriate action has been taken"

4.9 In cases where complaint is filed before the grievance commission, prosecute said complaint to final determination.

5.1 Any member of the bar desiring to expand the information authorized for disclosure pursuant to the provisions of DR 2-101 or DR 2-105, Iowa Code of Profesional Responsibility for Lawyers, or to provide for its dissemination through forums other than therein authorized or otherwise to change those rules, may apply to the committee. Such applcation shall be made in writing by restricted, certified mail, and shall include such documentation as the applicant deems appropriate. The committee thereafter shall determine, on the basis of documentation at hand, further investigation, or whatever hearings it deems to be necessary, whether all or any part of the proposal is necessary in the light of existing provisions of the code, accords with the standards of accuracy, reliability, and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services.

5.2 If the committee is of the opinion that no relief should be granted in response to any such application and no changes are necessary, it shall make a determination to that effect and then shall proceed as provided hereinafter.

5.3 If the committee concludes that relief should be granted in response to such application, it shall make its determination to that effect and submit the same to the supreme court by filing the same with the clerk of the court as a recommended amendment to the Iowa Code of Professional Responsibility for

Lawyers, universally applicable to all lawyers admitted to practice in Iowa.

5.4 Within ten days after the committee had made its determination under paragraphs 5.1 and 5.2 herein-above, it shall notify applicant of its determination by furnishing said applicant a copy thereof by restricted, certified mail. Applicant shall have thirty days from the date of the said mailing by the committee to the applicant to take exception to all or any part of the determination of the committee. Said exceptions shall be taken by filing with the committee within said thirty-day period, complete written notice and documentation of the exceptions and the reasons therefor, which shall be forwarded to the committee by restricted, certified mail.

5.5 Within thirty days from the receipt of the exceptions, the committee shall file with the clerk of the court a copy of said exceptions and documentations attached thereto, together with any written response which the committee seeks to make to the court together with a certification of its mailing to the applicant a copy of its response to the exceptions, in order that the court may determine the whole matter, with or without hearing, as to the court may appear appropriate and desirable.

5.6 Nothing herein contained shall permit any publication other than provided in DR 2-101 or DR 2-105 unless and until said DR 2-101 or DR 2-105 shall be amended by the court. No applicant for expanded information for disclosure or other publication under said rules shall make such disclosure or publication until the same specifically has been approved by rule of the court. [Adopted by Supreme Court Order May 18, 1978]

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APPENDIX "B"

GRIEVANCE COMMISSION

Court Rule 118. Complaint procedure.

Referred to in Rules EC 2—11, DR 2-101, DR 2-105, Disciplinary Guidelines, Grievance Committee Rules 3 and 7;-Ethics Procedure Rule 3.2; Court Rules 121.2 *"c"*(5), 121.3 *"i"*(8); 121.4 *"d"*(2); 121.5 *"a"*(2); 123.5 *"b"*; R.P.P. 5 *"d"*

118.1 Grievance commission. There is hereby created the Grievance Commission of the Supreme Court of Iowa whose members shall be the Committee on Grievances of the Iowa State Bar Association and their successors as confirmed by order of this court. Such members are appointed commissioners of this court. The grievance commission, or a duly appointed division thereof shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers or laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of this court. The grievance commission shall have such other powers and duties as are provided in these rules.

118.2 Procession of complaints. The members of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association and their successors, as confirmed by order of this court are appointed commissioners of this court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States of the state of Iowa. Upon completion of any such investigation the committee on professional ethics and conduct shall either dismiss the complaint made, or admonish or reprimand the complained against attorney, or file and prosecute the complaint before the grievance commission or any division thereof.

Referred to in R.P.P. 5 "d"

118.3 Reprimand. In event an attorney is reprimanded by the committee on professional ethics and conduct, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall immediately forward a copy thereof, by restricted certified mail, to the attorney reprimanded, therein stating that he or she has thirty days from the date of receipt thereof to file exceptions thereto with the clerk of the grievance commission. If the attorney fails to file an exception such failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of this court, together with proof of the aforesaid service thereof and a statement that no exceptions had been filed within the time prescribed. This court shall thereupon cause the reprimand to be spread upon the records of the court as a public document. In event, however, the attorney concerned files timely exception to the reprimand, no report of the reprimand shall be made to the clerk of this court and the reprimand shall be stricken from the records. The committee on professional ethics and conduct may, however, proceed further with any complaint against such attorney before the grievance commission. When a reprimand has been filed but exception is duly taken thereto such reprimand shall not be admissible in evidence in any hearing before the grievance commission.

118.4. Rules. The grievance commission and the committee on professional ethics and conduct shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to approval by this court.

118.5. Complaints. Every complaint filed against an attorney with the grievance commission shall be signed and sworn to by the chairman of the committee on professional ethics and con-

its rules or the time provided for such answer has expired, the grievance commission shall immediately upon the expiration of thirty days from the date the complaint was filed set the matter for hearing and notify all parties thereof at least ten days prior to the date set for such hearing, by restricted certified mail or personal service. If neither party has commenced any discovery within thirty days of the filing of the complaint, the hearing date shall be set not less than forty-five days nor more than sixty days after the filing of the complaint. If a party has commenced discovery, the hearing date shall be set not less than sixty days nor more than seventy-five days from the date the complaint is filed. The commission may grant reasonable continuances but only upon written application supported by affidavit. Proceedings and hearings before the grievance commission or any division thereof shall be confidential unless the attorney involved requests otherwise.

118.8 Subpoenas. The clerk of the district court of the county in which any disciplinary hearing is to be held shall issue subpoenas of all kinds upon request of the grievance commission, the complainant, or the attorney against whom a complaint has been filed. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses, and shall cause such testimony to be officially reported by a court reporter. The grievance commission shall report to the supreme court of Iowa the failure or refusal of any person to attend or testify in response to any subpoena or any ruling of said commission.

118.9. Decision. At the conclusion of a hearing upon any complaint against an attorney the grievance commission shall dismiss the complaint, or reprimand the attorney, or recomment to this court that the license to practice law of the accused attorney be suspended or revoked. If the grievance commission reprimands the attorney or recommends suspension or revocation of the attorney's license, it shall report to this court, in writing, its findings of fact, conclusions of law, and recommen-

dations. The commission may permit a reasonable time for the parties to file post hearing briefs and arguments. The disposition or report of the commission shall be made or filed with this court within thirty days of the date set for the filing of the last responsive brief and argument. If the commission cannot reasonably make its determination or file its report within such time limit, it shall report that fact and the reasons therefor to the parties and the clerk of this court. Any determination or report of the commission need only be concurred in by a majority of the commissioners sitting. Any commissioner has the right to file with this court his or her dissent from the majority determination or report. Such matter shall then stand for final disposition in this court. If the grievance commission dismisses the complaint, no report shall be made to this court, except as provided in rule 118.20. Any report of reprimand or recommendations for license suspension or revocation shall be a public document upon the filing thereof with the clerk of this court.

Referred to in Ct.R. 118.11

118.10. Disposition by the supreme court. Any report filed by the grievance commission with this court shall be served upon the attorney concerned as provided by the rules of the grievance commission. Such report shall be entitled in the name of the complainant versus the accused attorney as the respondent. If no exceptions are filed or no appeal is taken as hereinafter provided in these rules, the court shall proceed to determine the matter.

This court may revoke or suspend the license of an attorney admitted to practice in Iowa upon any of the following grounds: Conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Code of Professional Responsibility for Lawyers, or any cause now or hereafter provided by statute or these rules.

118.11 Exceptions and appeal. The respondent shall have twenty days to file with the clerk of this court a statement of exceptions to such report filed by the grievance commission pursuant to rule 118.9 and to give notice of appeal therefrom to this court. Such appeal shall thereafter be reviewed de novo by this court upon the record made before the grievance commission, and shall proceed as provided for appeals of civil cases. The complainant, within twenty days after filing of final disposition of a case by the grievance commission may apply to this court for permission to appeal from a ruling, report, or recommendation of the grievance commission. This court may grant such appeal, but not ex parte, and if the appeal is granted, it shall proceed as provided in appeals of civil cases. If such appeal is from the grievance commission's dismissal of a complaint, or of any charge contained therein, such appeal shall remain confidential. In event, however, this court reverses or modifies the report of the grievance commission, such court order of reversal or modification shall become a public record.

118.12. Suspension. In event an order of this court provides for the suspension of the license of an attorney to practice law, such suspension shall continue for the minimum time specified in such order and until this court has approved the attorney's written application for reinstatement.

Any attorney suspended shall refrain, during such suspension, from all facets of the ordinary law practice including but not limited to the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns.

118.13. Application for reinstatement. An application for reinstatement from any suspension shall be filed with the clerk of this court not more than sixty days prior to expiration of such suspension or time fixed for making application therefor in accordance with the provisions of court rule 117. In addition thereto the applicant shall state, in said application, that he or

she had complied in all respects with the orders and judgments of this court relating to the suspension. The applicant shall also submit to this court satisfactory proof that he or she, at time of the application, is of good moral character and in all respects worthy of the right to practice law.

118.14. Conviction of a crime. Upon receipt by this court of satisfactory evidence that an attorney had pled guilty to, or nolo contendere to, or has been convicted of a crime which would be grounds for license suspension or revocation, such attorney may be temporarily suspended from the practice of law by this court regardless of the pendency of an appeal. Not less than twenty days prior to the effective date of such suspension, the attorney concerned shall be notified, in writing directed by restricted certified mail to his last address as shown by the records accessible to this court, that he has a right to appeal before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to him in written form at a later time.

Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including but not limited to the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns.

For good cause shown, this court may set aside an order temporarily suspending an attorney from the practice of law as hereinabove provided, upon application by such attorney and hearing thereon in accordance with court rule 117, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

An attorney temporarily suspended under the aforesaid provisions of this rule shall be promptly reinstated upon the filing of a good and sufficient certificate disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of a crime as aforesaid shall, within ten days thereafter transmit a certificate thereof to the clerk of this court.

118.15. Disbarment on consent. An attorney subject to investigation or a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce in his or her disbarment, but only by delivering to the grievance commission an affidavit stating he or she consents to disbarment and that (1) the consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implication attendant upon such consent; (2) he or she is aware of a presently pending investigation into, or proceeding involving allegations that there exist grounds for discipline the nature of which shall be specifically set forth; (3) he or she acknowledges the material facts so alleged are true; and (4) in event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, he or she could not successfully defend against same.

Upon receipt of such affidavit the grievance commission shall cause same to be filed with the clerk of this court whereupon this court shall enter an order disbarring such attorney on consent.

Any order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required as aforesaid shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

118.16. Disability suspension. In event an attorney shall at any time in any jurisdiction by duly adjudicated a mentally incapacitated person, or an alcoholic, or a drug addict, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within ten days thereafter, certify same to the clerk of this court.

Upon the filing of any such certificate or a like certificate from another jurisdiction this court may enter an order suspending the license of such attorney to practice law in this state until further order of this court. Not less than twenty days prior to the effective date of such suspension, the attorney concerned or his or her guardian and the director of the institution or hospital to which such attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to his last address as shown by the records accessible to this court, that he has a right to appear before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to him in written form at a later time. A copy of such suspension order shall be given the suspended attorney, or to his or her guardian and the director of the institution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as this court may direct.

Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including but not limited to the examination of abstracts, consummation of real estate transactions, preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns.

No attorney suspended due to disability under the aforesaid provisions of this rule may engage in the practice of law in this state until reinstated by order of this court. Any attorney so suspended shall be entitled to apply for reinstatement to active status once each year or at such shorter intervals as this court may, in the suspension order, provide or specify. An attorney suspended due to any aforesaid disability may be reinstated by this court upon a showing, by clear and convincing evidence, that the attorney's disability has been removed and he or she is fully qualified to resume the practice of law. Upon the filing of an application for reinstatement this court may take or direct any action deemed necessary or proper to determine whether such suspended attorney's disability has been removed, including a direction for an examination of the applicant by such qualified medical experts as this court shall designate. In its discretion this court may direct that the expenses of such an examination be paid by the petitioning attorney.

The filing of an application for reinstatement to active status by an attorney suspended due to disability shall constitute a waiver of any doctor-patient privilege with regard to any treatment of the petitioning attorney during the period of his or her disability. Such attorney shall also set forth in his or her application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other institution by whom or in which the petitioning attorney has been examined or treated since his or her suspension due to disability, and shall also furnish to this court written consent that any such psychiatrist, psychologist, physician and hospital or other institution by whom or in which the petitioner has been examined or treated as aforesaid may divulge any and all information and records requested by this court or any court-appointed medical experts.

Where an attorney has been suspended due to any aforesaid disability and thereafter, in proceedings duly had, he or she

shall be judicially held to be competent or cured, this court may dispense with further evidence regarding removal of his or her disability and may order his or her reinstatement to active status upon such terms as are deemed reasonably proper and advisable.

118.17. Reciprocal discipline. Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, shall promptly advise the grievance commission, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the grievance commission shall obtain a certified copy of such disciplinary order and cause same to be filed in the office of the clerk of this court.

Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, this court shall promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: (1) A copy of said disciplinary order from the other jurisdiction or federal court, and (2) an order directing that such disciplined attorney inform this court, within thirty days after receipt of said notice, of any claim by such attorney that imposition of identical discipline in this state would be too severe, too lenient or otherwise unwarranted, giving the specific reasons therefor. A like notice shall be mailed to the committee on professional ethics and conduct of the Iowa State Bar Association. If either party so informs this court, the matter shall be set for hearing before five or more justices of this court and the parties notified thereof by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court shall be admitted into evidence as well as any findings of fact, conclusions of law, decision and orders decided or issued. Any such findings of fact shall be con-

clusive and not subject to readjudication. Thereafter, the court shall enter such findings, conclusions and orders that it deems appropriate. If neither party so informs this court within thirty days from service of notice issued pursuant to the foregoing provisions hereof, this court may impose the identical discipline, unless this court finds that on the face of the record upon which the discipline is predicated it clearly appears: (1) The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process; or (2) there was such infirmity of proof establishing misconduct as to give rise to the clear conviction that this court could not, conscientiously, accept as final the conclusion on that subject; or (3) the misconduct established warrants substantially different discipline in this state.

Where this court determines that any of the aforesaid factors exist, such order as is deemed appropriate may be entered by this court. Rule 117 shall apply to any subsequent reinstatement or reduction or stay of discipline.

118.18. Notification of clients and counsel. In every case in which a respondent is ordered to be disbarred or suspended, the respondent shall:

(a) Within fifteen days in the absence of co-counsel, notify his or her clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer;

(b) Within fifteen days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(c) Within thirty days refund any part of any fees paid in advance that have not been earned;

(d) Within fifteen days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the respondent's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline or transfer to disability inactive status;

(e) Within fifteen days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties;

(f) Keep and maintain records of the steps taken to accomplish the foregoing; and

(g) Within thirty days file proof with this court and with the Committee on Professional Ethics and Conduct of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

118.19. Immunity. Complaints submitted to the grievance commission or testimony with respect thereto shall be privileged and no lawsuit predicated thereon may be instituted.

Members of the grievance commission, members of the committee on professional ethics and conduct, and their respective staffs shall be immune from suit for any conduct in the course of their official duties.

A true copy of any complaint against a member of the grievance commission or the committee on professional ethics and conduct involving alleged violations of the attorney's oath of office or of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of this court.

118.20. Reports. The chairman of the grievance commission and the chairman of the committee on professional ethics and conduct shall, on July 1 of each year, submit to this court a report of the number of complaints received and processed dur-

ing the prior period, a synopsis of each such complaint, and the disposition thereof. In event such disposition was by way of dismissal of the complaint, the name of the attorney charged shall be omitted, but a synopsis of the charges made and by whom and a report of disposition shall be included.

Referred to in Ct.R. 118.9; R.P.P. 5*"d"*

118.21. Effective dates. These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1975; November 21, 1977; January 15, 1979]

APPENDIX "C"

RULE 1. TERMS AND SESSIONS

Time. The court shall hold one general term annually beginning on the second Monday of September. Sessions shall be held at such times and places as the court directs.

RULE 2. ASSIGNMENT OF JUDGES: QUORUM

Noncontroversial Orders

(a) ASSIGNMENT OF JUDGES: QUORUM. The judges of this court shall, as provided in Title 28 U.S.C. § 46, be assigned to sit upon the court and its divisions as the court directs. Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court en banc is ordered as provided by Rule 35 of the Federal Rules of Appellate Procedure and Rule 7 of these Rules. A majority of the number of judges authorized to constitute the court or a division thereof shall constitute a quorum. (As amended effective July 1, 1973.)

(b) ABSENCE OF QUORUM: ADJOURNMENT. If on the opening day or any other day of the term less than a quorum is present, any judge in attendance may adjourn the court until a later time, or, if no judge is present, the clerk may adjourn the court from day to day.

(c) PROCEDURAL ORDERS. A single judge of the court shall exercise the power to determine motions and petitions or to perform any power conferred on a single judge by Rule 27(c) of the Federal Rules of Appellate Procedure. This authorization shall include the power to (1) grant the right to appeal in forma pauperis, including the right to have the transcript prepared at government expense; (2) grant a certificate of probable cause; (3) grant appointment of counsel for an indigent defendant proceeding under Title 28, § 1915; (4) deny a motion to dismiss in accordance with local rule 9(b); (5) to order a stay in any

criminal or civil proceeding pending the determination of the stay by the court.

Any two judges of the court shall exercise the power to determine (1) the denial of the right to appeal in forma pauperis; (2) the denial of a certificate of probable cause; (3) grant of a stay pending appeal; (4) the denial of appointment of counsel in indigent cases; (5) to deny or grant bond pending appeal.

In all other matters three judges shall be convened.

(d) ORDERS GRANTABLE FOR THE COURT BY THE CLERK. The clerk of this court is authorized, in his discretion, and subject to review by the court, to take appropriate action in procedural matters, including the following:

(1) Consolidation of appeals;

(2) Substitution of parties;

(3) Motion to appear as amicus curiae;

(4) Motion to advance or continue cases;

(5) Applications to file briefs exceeding 50 pages;

(6) To allow amicus counsel to participate in oral argument by sharing time with other counsel;

(7) To enlarge the time for filing designations as to printing under Rule 30, F.R.A.P.;

(8) To transmit records to the Supreme Court for use in connection with petitions for writs of certiorari;

(9) To withdraw appearances in civil cases;

(10) To make corrections in briefs or pleadings, filed in this court at the request of counsel;

(11) To extend time for filing petitions for rehearing for not longer than ten days;

(12) To supplement or correct records;

(13) To incorporate records on former appeals;

(14) To authorize alternative method of designating contents of the appendix, under Rule 30(c), F.R.A.P.;

(15) To enter consent decrees in labor board and other government agency review cases;

(16) To appoint trial counsel on appeal in cases under the Criminal Justice Act.

If any of the above motions are opposed the clerk is authorized to submit the matter for ruling to a single judge of the court.

(e) RECONSIDERATION OF ORDERS. Any interested party adversely affected by an order entered by the clerk pursuant to subdivision (d) of this rule, shall be entitled to a reconsideration thereof by a quorum of the court or a judge of the court if, within ten days after service of notice of the entry of the order, such party shall file with clerk and serve upon the party who filed the motion or application for the order, a request in writing for the reconsideration, vacation or modification of the order, stating the grounds for such request. The clerk shall thereupon submit to a quorum of the court or to a judge of the court the order complained of, the motion or application upon which it was entered, the request for its reconsideration, and any suggestions which may have been filed in support of or in opposition to the request. The judges or judge shall reconsider the order and shall take such action with respect thereto as may be proper.

RULE 3. NO ORAL ARGUMENT OF MOTIONS

Motions shall be considered and decided by the court upon the motion papers and briefs. No oral argument will be allowed unless requested by the court.

RULE 4. CLERK

(a) LOCATION OF OFFICE. The clerk's office shall be in St. Louis, Missouri.

(b) DUTIES. The clerk shall perform the duties prescribed by Rule 45 of the Federal Rules of Appellate Procedure.

(c) CLERK TO FURNISH COPIES. The clerk, upon the filing of an opinion, shall mail a copy thereof to counsel for each of the parties who appeared in the case. For each additional copy of an opinion, a charge of $3.00 shall be made by the clerk. Annual subscriptions to all published opinions of the court are available at the rate of $200 per annum.

RULE 5. CALENDAR

(a) HEARING CALENDAR. A calendar shall be prepared by the clerk for each session of the court in accordance with the provisions of Rule 45(b) of the Federal Rules of Appellate Procedure. The clerk shall make every effort to prepare the calendar so that it is published no later than 20 days before the session. Counsel who anticipate a possible conflict are to notify the clerk prior to preparation of the calendar. After the preparation of the calendar any request to vacate a particular setting of a case shall be directed to the panel of Judges before whom the case has been calendared. Motions to vacate settings are not looked on with favor and will be granted only for good cause.

(b) ADVANCEMENT OF HEARINGS. The court may, on its own motion, or for good cause shown on motion of either party, advance any case to be heard at any session, though the time permitted under the rules for filing briefs may not have expired at the date set for hearing.

(c) POSTPONEMENT OF THE HEARING. After a case has been set for hearing, it may not be continued by stipulation of the parties, but only by an order of the court on good cause shown. Engagement of counsel in other courts will not be considered good cause.

(d) COMPANION CASES. Two or more cases involving the same question may by order of the court be heard together.

RULE 6. DOCKET CONTROL

(1) The chief judge may, from time to time in his discretion, appoint a panel or panels of judges of this court to screen pending cases for appropriate assignment or disposition under the rules of this court.

(2) A screening panel may classify a case as one requiring a full argument—30 minutes, an abbreviated argument—20 minutes, or as one requiring no argument.

(3) The clerk shall notify the parties of record when a case is classified as one in which no oral argument will be permitted. Any party so notified may request the court to re-classify the case as one requiring oral argument by filing a written request for reclassification within five days of the receipt of the notification.

(4) The clerk shall indicate on the calendar the time allocated for the argument of each case.

RULE 7. HEARING AND REHEARING EN BANC

A party or a judge of this court in regular active service may suggest that a case or controversy be heard or reheard en banc. A majority of the judges of this court in regular active service who are actively participating in the affairs of the court and are not disqualified in the particular case or controversy may order a hearing or rehearing en banc. The panel for the hearing or rehearing consists of the judges of this court in regular active service who are actively participating in the affairs of the court at the time of the hearing or rehearing and are not disqualified in the particular case or controversy and the senior circuit judges of this circuit who sat at the original hearing thereof unless the senior circuit judges elect not to sit at the rehearing en banc.

RULE 8. TRANSMISSION OF THE RECORD

Pursuant to Rule 11(e) of the Federal Rules of Appellate Procedure a certified copy of the docket entries in the proceeding below shall be transmitted to this court in lieu of the entire record, subject however to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted. In all other respects the trasmission of the record shall be in accordance with the Federal Rules of Appellate Procedure.

RULE 9. SUMMARY DISPOSITION

(a) ON THE MOTION OF THE COURT. The court may at any time, on its own motion and without notice, dispose of an appeal summarily, except that notice must be given if the appeal is in forma pauperis, a certificate of probable cause has been issued, and briefs have not been filed. The court may dismiss an appeal that is not within the jurisdic-...

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